GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

UNSTARRED QUESTION NO:4381
ANSWERED ON:08.05.2007
USE OF NAMES FOR COMMERCIAL PURPOSES
Singh Shri Chandrabhan Bhaiya

Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether the use of names and photographs of the Father of the Nation Shri Mahatma Gandhi, Pandit Jawahar Lal Nehru and Shrimati Indira Gandhi for commercial purposes is permitted under the Trade Mark Act, Patent and Design Act and Companies Act;

(b) if so, the details thereof and the reasons therefor;

(c) whether Trade Mark Act, Patent and Design Act and Companies Act are potent for checking the use of the names and pictures of Lord Shriram, Shrikrishna, Shri Ganesh, Lord Shiva, Vishnu and other Gods and Goddesses who are the symbols of the faith and belief of the Hindus in Commercial purposes;

(d) if so, whether the Government has taken any steps to include the said Acts in the Ninth Schedule;

(e) if so, the details thereof; and

(f) if not, the reasons therefor?

Answer

MINISTER OF THE STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY (SHRI ASHWANI KUMAR)

(a): No, Sir.

(b): In view of (a) above, does not arise.

(c): There are adequate safeguards provided under the provisions of the Trade Marks Act, to protect misuse of name and pictorial representations of various Hindu Gods and Goddesses for commercial purposes. Section 9 (2) of the Trade Marks Act, 1999, inter alia, provides that a mark shall not be registered as a trade mark if (i) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; and (ii) its use is prohibited under Section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950. Further, Section 4 of the Emblems and Names Act prohibits (a) registration of any company, firm, or other body of persons which bears any name, or (b) registration of a trade mark or design which bears any emblem or name, or (c) grant a patent in respect of an invention which bears a title containing any emblem or name

Section 23(1) of the Trade Marks Act, 1999 also empowers the Central Government to prohibit registration of any word as a trade mark containing words of Lord Buddha, Ashoka Chakra, Dharam Chakra, Sri Sai Baba, Sri Ram Krishna, Swami Vivekananda, Shri Saradadevi (Holy mother); the name and the pictorial representation of Sikh Gurus, the name and the pictorial representation of Lord Venkateshwara or Balaji etc.

Section 20(1) of the Companies Act, 1956 provides that no company can be registered with a name which, in the opinion of the Central Government, is undesirable. With a view to illustrate the word "undesirable", Department of Company Affairs have issued guidelines/instructions for the guidance of Registrar of Companies entrusted with the task of registration of name of the companies, stating that if a name attracts the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950, the same will not generally be made available for registration.

Section 3(b) of the Patents Act, 1970 prohibits an invention, the primary or intended use or commercial exploitation of which would be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment.

Section 4(d) of the Designs Act, 2000 provides that a design which comprises or contains scandalous or obscene matter shall not be registered. The designs containing the representation of Hindu God and Goddesses hurting the religious sensibility and feeling may fall within the ambit of the above Section and is a non-registerable design.

(d) to (f) : The Acts referred to above are not required to be included in the Ninth Schedule for purposes of ensuring their enforcement.